

Remarks

This Amendment is in response to the Final Office Action of December 9, 2010, wherein the Examiner rejected claims 1-20.

The Examiner first objected to claim 14 for the term “beneath.” Applicants have amended the claim to accept the Examiner’s suggested language.

The Examiner next rejected claims 14-20 under 35 U.S.C. 112 as failing to comply with the written description requirement. The Examiner states that there is no support in the specification or drawings for more than one first clip-retaining portion and more than one second clip-retaining portion. Applicants have changed the language to recite “two clip-retaining portions.” Such portions for example can be the pair of blocks 64, 66 or the pair of legs 72, 73.

Claims 14 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by *Andrew* (US Patent No. 3,602,227).

Regarding claim 14, Fig. 1 of *Andrew* discloses a two piece retainer having a formation *below the base* to retain the two pieces in a vertical direction and a U-shaped clip that engages opposite sides of a projection 7 to retain the clip in a horizontal direction.

Claim 14 has been amended to describe the cap which provides an overhang and a vertical clearance between the cap and the base to retain the clip onto the tube holding formation. The clip is sized and configured to have a thickness to be captured between the cap and the base to prevent removal of the clip from the base.

This is shown for example in Figure 2 of the specification wherein the cap 86 overhangs the base raised portion 50c to provide a vertical clearance for the clip to slide

snugly between the cap and the base. This feature allows for an easy and reliable engagement of the clip to the tube holding formation. In contrast, the vertical engagement of the two pieces in *Andrew* occurs below the upper surface of the holder and cannot be as easily visually verified and assembled during an emergency as compared to the present invention set forth in claim 14.

Because claim 14 distinguishes *Andrew*, dependent claims 15-20 also distinguish this reference as well.

Claims 1, 4-5, 7-8, 12-15, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Dominguez* (US Patent No. 6,526,978 B2) in view of *Schiefer et al.* (US Patent No. 4,118,838) further in view of *Wilderman* (US Patent No.4,202,087).

Dominguez show an endotracheal tube holder having a base including a bottom surface bearing against a patient's face; a tube-holding assembly having a block 18 and two smaller blocks or arms extending from the block. However, *Dominguez* does not disclose the *clip legs straddling the tube-securing block* and being engaged to the clip-securing blocks as now claimed in claim 1. *Schiefer et al* also does not disclose this feature.

Wilderman is a patent directed to a setting cable retaining device for precast sections of a water well. This patent is non-analogous to *Dominguez*. *Dominguez* is directed to endotracheal tube holder for medical treatment of a patient. *Schiefer et al.* is directed to pipe or cable clamps. Neither *Wilderman* nor *Schiefer et al.* is in the medical or emergency treatment fields and do not address problems of endotracheal tube retention in a patient in an emergency treatment situation. One of skill in the art

would not consider *Wilderman* or *Schiefer et al.* to be relevant to, or combinable with, the disclosure of *Dominguez*.

Furthermore, even if one could consider *Wilderman* or *Schiefer et al.* to be analogous art, these references do not teach or suggest that the tube block holds the endotracheal tube in a direction generally *perpendicular* to the opposite surface of the base. *Wilderman* teaches that the setting cable is retained in a direction parallel to the base and not perpendicular to the base. This is intentional in *Wilderman*. At column 2, lines 53-57, it is stated that: “The base unit 13 has a rectangular shaped base wall 16 and a W-shaped top wall 17, wherein the free ends of the top wall 17 connect with the base wall 16 and the V-shaped groove 18 of the top wall extends longitudinally.” The purpose of the of the guide units 11 is to align cables vertically along plural guide units 11.

Regarding independent claim 14, neither *Dominguez* nor *Schiefer et al* disclose a clip sized and configured having a thickness to be captured between an overhanging cap and the base to prevent removal of the clip from the base.

This arrangement of claim 14 gives the emergency caregiver a view from the top of the endotracheal tube holder that verifies the proper engagement of the clip with the clip holder and base both in the vertical direction, by virtue of the engagement of the clip partially between the base and the cap, and in the horizontal direction by virtue of the first and second clip-retaining portions.

Because these three references do not disclose the features of amended claim 1, or 14, claims 1, 4-5, 7-8, 12-15, and 17 should all now be allowable.

Claims 2-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Dominguez* in view of *Schiefer* as applied to claims 1, 4-5, 7-8, 10, 12-15, and 17 above, and further in view of *Hayatdavoudi*.

Hayatdavoudi also does not disclose the features of amended independent claims 1 and 14 so that all claims 1, 14 and dependent claims 2-3 and 16 should be allowable.

Claim 6 is rejected under U.S.C. 103(a) as being unpatentable over *Dominguez* in view of *Schiefer* as applied to claims 1, 4-5, 7-8, 10, 12-15, and 17 above, and further in view of *Rosenbeck*..

Rosenbeck also does not disclose the features of amended independent claim 1 so that all claims 1 and dependent claim 6 should be allowable.

Claim 9 is rejected under U.S.C. 103(a) as being unpatentable over *Dominguez* in view of *Schiefer* as applied to claims 1, 4-5, 7-8, 10, 12-15, and 17 above, and further in view of *Islava*.

Islava also does not teach the features of amended claim 1 so that claims 1 and 9 should also be allowable.

Claims 11 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Dominguez* in view of *Schiefer* as applied to claims 1, 4-5, 7-8, 10, 12-15, and 17 above, and further in view of *Wing et al.*

Wing et al. also does not teach the features of amended claims 1 and 14 so that claims 1, 11, 14 and 19 should all be allowable.

Claims 14, 15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Dominguez* (US Patent No. 6,526,978 B2) in view of *Schiefer et al.* (US Patent No. 4,118,838).

However, neither *Dominguez* nor *Schiefer et al* disclose a clip hold down portion providing a cap that overhangs the base and forms a vertical clearance between the base and the cap wherein the clip is sized and configured to have a thickness to be captured between the cap and the base to prevent removal of the clip from the base. *Dominguez* discloses a clip that is engaged with a base below the base on the face-engaging surface by a dovetail arrangement.

The arrangement of claim 14 gives the emergency caregiver a view from the top of the endotracheal tube holder that verifies the proper engagement of the clip with the clip holder and base both in the vertical direction, by virtue of the engagement of the clip partially between the base and the cap, and in the horizontal direction by virtue of the first and second clip-retaining portions.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Dominguez* (US Patent No. 6,526,978 B2) in view of *Schiefer et al.* (US Patent No. 4,118,838) and further in view of *Hayatdavoudi*.

Since none of the references teach or suggest claim 14, claim 16 should also be allowable.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Dominguez* (US Patent No. 6,526,978 B2) in view of *Schiefer et al.* (US Patent No. 4,118,838) and further in view of *Wing et al.* Since none of the references teach or suggest claim 14, claim 18 should also be allowable.

Claims 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Dominguez* in view of *Young, Jr., et al.*

Young, Jr., et al. also does not teach the features of amended claim 14 so that claims 19-20 should all be allowable.

Applicants submit that the claims should now all be in allowable condition.

Respectfully submitted,

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